

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LLOYD DIXON, III,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-810-SLR
)	
THOMAS CARROLL, Warden,)	
)	
Respondent.)	

Lloyd Dixon, III, Smyrna, Delaware. Petitioner, pro se.

Loren C. Meyers, Deputy Attorney General, Delaware Department of Justice, Wilmington, Delaware. Counsel for Respondent.

MEMORANDUM OPINION

Dated: January 30, 2003
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Petitioner Lloyd Dixon, III, is an inmate at the Delaware Correctional Center in Smyrna, Delaware. Currently before the court is petitioner's application for habeas corpus relief pursuant to 28 U.S.C. § 2254. (D.I. 1) For the reasons that follow, the court concludes that petitioner's application is time barred by the one-year period of limitation prescribed in 28 U.S.C. § 2254(d)(1). Accordingly, the court will dismiss the petition as untimely.

II. BACKGROUND

In August 1994, petitioner was convicted by jury of one count of first degree burglary and two counts of first degree robbery in Delaware Superior Court. (D.I. 2) In October 1994, petitioner was sentenced to mandatory life imprisonment as a habitual offender under Del. Code Ann. tit. 11, § 4214(b) for the burglary conviction and, an additional twelve years for the two robbery convictions. (Id.) On appeal, the Delaware Supreme Court reversed both robbery convictions but affirmed the burglary conviction. Dixon v. State, 673 A.2d 1220 (Del. 1996).

On September 13, 1996, petitioner moved to correct his sentence pursuant to Super. Ct. Crim. R. 35(a) contending that he was improperly sentenced as a habitual offender and for the underlying robbery offences. The Superior Court denied the motion as moot in light of the reversal of the robbery

convictions on appeal. This decision was subsequently affirmed by the Delaware Supreme Court on March 26, 1997. Dixon v. State, 693 A.2d 1082 (Del. 1997). On February 7, 2000, petitioner then filed for state post-conviction relief pursuant to Super. Ct. Crim. R. 61(i)(5) challenging the burglary indictment as vague and indefinite, causing prejudice to petitioner in preparing his defense. On June 30, 2000, the Superior Court denied the motion and was affirmed on appeal by the Delaware Supreme Court on February 26, 2001. Dixon v. State, 2001 WL 213392 (Del. Feb. 26, 2001).

Petitioner has now filed the current application for federal habeas relief. In his application, petitioner again alleges that his burglary indictment was vague and indefinite, causing him prejudice in preparing his defense. Respondent asserts that the petition is subject to a one-year period of limitation that expired before petitioner filed it, and asks the court to dismiss the petition as time barred.

III. DISCUSSION

A. One-Year Period of Limitation

Effective April 24, 1996, the Antiterrorism and Effective Death Penalty Act ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), amended 28 U.S.C. § 2254 to impose a one-year statute of limitations on the filing of a federal habeas petition by a state prisoner. See 28 U.S.C. § 2244(d)(1); Stokes v. District

Attorney of County of Philadelphia, 247 F.3d 539, 541 (3d Cir.),
cert. denied, 122 S. Ct. 364 (2001). The one-year limitations
period begins to run from the latest of:

(a) the date on which the judgment became final by the
conclusion of direct review or the expiration of the
time for seeking such review;

(b) the date on which the impediment to filing an
application created by State action in violation of the
Constitution or laws of the United States is removed,
if the applicant was prevented from filing by such
State action;

(c) the date on which the constitutional right asserted
was initially recognized by the Supreme Court, if the
right has been newly recognized by the Supreme Court
and made retroactively applicable to cases on
collateral review; or

(d) the date on which the factual predicate of the
claim or claims presented could have been discovered
through the exercise of due diligence.

28 U.S.C. § 2244(d) (1).

As described above, the petitioner was sentenced in October
1994. Petitioner timely filed an appeal to the Delaware Supreme
Court, which affirmed the Superior Court's decision on April 4,
1996. Petitioner then had 90 days, i.e., July 3, 1996, to file a
petition for a writ of certiorari with the United States Supreme
Court. Petitioner did not file for a writ of certiorari,
therefore, his federal habeas petition had to be filed by July 3,
1997 in order to be timely under § 2244(d).

The court's docket reflects that the current petition was
filed on December 7, 2001. (D.I. 1) A pro se prisoner's habeas

petition, however, is deemed filed on the date he delivers it to prison officials for mailing to the district court, not on the date the district court docket it. Burns v. Morton, 134 F.3d 109, 113 (3d Cir. 1998). Here, petitioner certifies that he deposited his petition, addressed to the clerk of this court, in the prison mail system on November 1, 2001. (D.I. 1) The court thus deems his petition filed on November 1, 2001.

In short, the one-year period of limitation began running when petitioner's conviction became final on July 3, 1996. His habeas petition was filed nearly five years later on November 1, 2001. That, however, does not end the timeliness inquiry, because the one-year period is subject to statutory and equitable tolling. See Jones v. Morton, 195 F.3d 153, 158 (3d Cir. 1999).

B. Statutory Tolling

The AEDPA provides that the statute of limitations is tolled during the time that a state prisoner is attempting to exhaust his claims in state court. Section 2244(d)(2) states that

[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

28 U.S.C. § 2244(d)(2). Such an application is considered "pending" during the time a state prisoner is pursuing his state post-conviction remedies, including the time for seeking discretionary review of any court decisions whether or not such

review was actually sought. See Swartz v. Meyers, 204 F.3d 417, 424 (3d Cir. 2000).

Here, petitioner filed a motion to correct his sentence in Superior Court on September 13, 1996. By this time 72 days of his one-year period had run. Petitioner's motion to correct his sentence was denied by the Superior Court, a decision ultimately affirmed by the Delaware Supreme Court on March 26, 1997. The court thus finds that the period of time from September 13, 1996 through March 26, 1997, is excluded from the one-year period of limitation. The limitations period, having been tolled during this period, now resumed with 293 days remaining, making January 13, 1998, petitioner's last day to file for federal habeas relief.

Petitioner's February 7, 2000 motion for state post-conviction relief was filed **after** the extended limitations period ended and, therefore, does not implicate the statutory tolling mechanisms of 28 U.S.C. § 2244(d)(2). See Fisher v. Gibson, 262 F.3d 1135, 1142-43 (10th Cir. 2001); Spencer v. Snyder, 2002 WL 1774234 *2 (D. Del. July 24, 2002).

In sum, notwithstanding the application of the statutory tolling provision, over 2 years lapsed during which no post-conviction proceedings were pending in the state courts. For this reason, the court concludes that the statutory tolling provision does not render the petition timely filed.

C. Equitable Tolling

Additionally, the one-year period of limitation may be equitably tolled. Fahy v. Horn, 240 F.3d 239, 244 (3d Cir.), cert. denied, 122 S. Ct. 323 (2001); Jones, 195 F.3d at 159; Miller v. New Jersey State Dep't of Corr., 145 F.3d 616, 618 (3d Cir. 1998). The doctrine of equitable tolling applies

only when the principles of equity would make the rigid application of a limitation period unfair. Generally, this will occur when the petitioner has in some extraordinary way been prevented from asserting his or her rights. The petitioner must show that he or she exercised reasonable diligence in investigating and bringing [the] claims. Mere excusable neglect is not sufficient.

Miller, 145 F.3d at 618-19 (citations omitted). In other words, equitable tolling "may be appropriate if (1) the defendant has actively misled the plaintiff, (2) if the plaintiff has 'in some extraordinary way' been prevented from asserting his rights, or (3) if the plaintiff has timely asserted his rights mistakenly in the wrong forum." Jones, 195 F.3d at 159 (quoting United States v. Midgley, 142 F.3d 174, 179 (3d Cir. 1998)).

In the instant case, petitioner has failed to articulate any extraordinary circumstances that prevented him from filing his petition with this court in a timely manner. Moreover, the court has independently reviewed the record, and can discern no extraordinary circumstances that warrant applying equitable tolling.

IV. CERTIFICATE OF APPEALABILITY

Finally, the court must determine whether a certificate of appealability should issue. See Third Circuit Local Appellate Rule 22.2. The court may issue a certificate of appealability only if petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

When a federal court dismisses a habeas petition on procedural grounds without reaching the underlying constitutional claims, the petitioner must demonstrate that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Slack v. McDaniel, 529 U.S. 473, 484 (2000). "Where a plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further." Id.

As explained above, the court has concluded that petitioner's application is time barred, and that neither the statutory tolling provision nor the doctrine of equitable tolling renders the petition timely. The court is persuaded that reasonable jurists would not debate the correctness of these conclusions. Petitioner, therefore, has failed to make a

substantial showing of the denial of a constitutional right, and a certificate of appealability is not warranted.

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O R D E R

At Wilmington this 30th day of January, 2003, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254 (D.I. 1) is dismissed and the writ denied.
2. The court declines to issue a certificate of appealability for failure to satisfy the standard set forth in 28 U.S.C. § 2253(c)(2).

Sue L. Robinson
United States District Judge